IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

WP(C).No. 4658 of 2007(S)

OA.566/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. UNION OF INDIA,
REPRESENTED BY THE GENERAL MANAGER,
SOUTHERN RAILWAY, PARK TOWN, CHENNAI-600003.

2. THE CHIEF PERSONNEL OFFICER,
SOUTHERN RAILWAY, HEADQUARTERS OFFICE,
PARK TOWN P.O., CHENNAI-600003.

3. THE DIVISIONAL SIGNAL &
TELECOMMUNICATION ENGINEER (WORKS),
SOUTHERN RAILWAY, PODANUR, COIMBATORE DISTRICT (TAMIL NADU).

4. THE CHIEF WORKSHOP MANAGER,
SIGNAL & TELECOMMUNICATION WORKSHOP SOUTHERN RAILWAY, PODANUR, COIMBATORE DISTRICT(TAMIL NADU).

BY ADV. SRI.T.P.M.IBRAHIM KHAN,SR.SC, RAILWAYS

RESPONDENTS:

M. CHELLAKANNU, SON OF MARIMUTHUPILLAI,
RETIRED MASTER CRAFTSMAN/CARPENTER, SIGNAL & TELECOMMUNICATION WORKSHOP, PODANUR (RESIDING AT NO.1/14, MANANGORAL POST, PASUPATHY KOIL (VIA), THANJAVUR (T.K. & DISTRICT).

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/02/2007 ALONG WITH WPC NO.4725 OF 2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C).NOS.4658 & 4725 OF 2007 (S)

Dated this the 20th day of February, 2007

J U D G M E N T

KOSHY,J.

These writ petitions are filed challenging the order of the Central Administrative Tribunal under Article 227 of the Constitution of India. Respondents in these writ petitions were employed as casual workers from 1962 and 1963 respectively under the Southern Railway. They were later appointed as Khalasi in S & T Workshop at Podanur on May 1973. On the basis of the decision in ***L Robert D'Souza v. Executive Engineer, S. Rly ((1982) 1 SCC 645)*** they claimed benefits for reckoning 50% of the casual temporary service as qualified service for the purpose of pension. The Honourable Supreme Court after considering Rule 2501 (b) (1) held that even where staff is paid from contingencies, they would acquire the status of temporary railway servants after expiry of six months of continuous employment. To prove that they were in

continuous employment for more than six months from 1962 and 1963 onwards they produced the service cards in their possession. The claim was rejected by the petitioner Railway on the ground that since claim was belated service particulars are not kept. It was also contended that they were employed for project works. That objection was rejected by the Central Administrative Tribunal. The genuineness of the service cards is not doubted. Their service was considered by the Tribunal and found that they had continuous service for more than six months as casual labourers. It is also stated that it cannot be stated that claims are time barred because question of granting pension will arise only after retirement. The court also found that they were DSTE workers working under Divisional Signal and Telecommunication Engineer works and PTJ is not a project work. So when the employer did not produce documents and in the absence of undisputed service cards produced by the respondents, Tribunal issued the following direction.

> "Respondents are directed to take into account the service rendered by the applicants prior to their regularization as detailed in para 8 of the respective OA and work out that period which would be counted for pension purposes and revise their pensionery benefits. This drill shall be performed within a period of five months from the date of communication of this order."

It only means that the Tribunal allowed for reckoning 50% of the casual temporary service of respondents as qualified service for the purpose of pension following the earlier decisions. Similar decisions on identically placed employees were upheld in O.P.Nos.1743 and 24523/1998, O.P.No.16991/1997 and O.P.No.19763/2000. The decision of the Tribunal is based on the findings of facts and we are of the opinion that no interference is required under Article 227 of the Constitution of India. There is no perversity of finding or error of jurisdiction and no valid grounds are made out to interfere in a petition filed under Article 227 of the Constitution of India. Whether the particular work is a project work and number of days they have worked etc. are findings of facts

based on evidence. There is no perverse findings or error of jurisdiction. Therefore, we see no ground to interfere in the matter and both petitions are disposed of accordingly.

J.B.KOSHY, JUDGE

T.R.RAMACHANDRAN NAIR, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

O.P.NO. OF 2006 ()

J U D G M E N T

1th January, 2007